

**TENNESSEE DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS  
CASE RESOLUTION AND INVESTIGATION MANUAL**

**INTRODUCTION**

The Tennessee Department of Education Office for Civil Rights' purpose is to ensure and enforce compliance with the several civil rights statutes affecting education and educational institutions within our jurisdiction, specifically the Local Education Agencies throughout the State of Tennessee. It is our responsibility to ensure that the recipients of State and Federal funds are not engaging in unlawful discrimination. The Case Resolution and Investigation Manual (CRIM) provides procedures effectuating the prompt and effective investigation and resolution of complaints against recipients allegedly engaging in discriminatory practices.

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## **Article I: PURPOSE**

The Tennessee Department of Education Office of Civil Rights is charged with the responsibility of investigating, ensuring and enforcing compliance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, and Title IX of the Education Amendments of 1972, 20 U.S.C. §1681, against ALL Local Education Agencies as defined below. The Tennessee Department of Education Office of Civil Rights is charged with the responsibility of investigating, ensuring and enforcing compliance with Title II of the Americans with Disabilities Act, 42 U.S.C. §12132, §504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975 ONLY as to the State of Tennessee Department of Education and State Schools as defined below. Title VI and Title IX jurisdiction extends ONLY to Local Education Agencies within the State of Tennessee who are receiving federal funding. If unlawful discrimination occurs under Title VI or Title IX this office has the authority to enforce compliance through denying federal funding. If unlawful discrimination occurs under Title II, §504, or the Age Discrimination Act the United States Department of Education Office for Civil Rights and/or the United States Department of Justice have the authority to enforce compliance through denying federal funding as against all LEAs. The Tennessee Department of Education may deny the federal funding of State Schools—which are subject to its Title II, §504, and Age Discrimination Act polices—until the discriminatory practice is discontinued. The Tennessee Department of Education Office of Civil Rights shall investigate and resolve all allegations of discrimination under any of the civil rights statutes applicable to the Tennessee Department of Education in the manner stated in this document.

## **Article II: DEFINITIONS**

As used in this Office Policy and Procedure Manual the following terms shall mean:

- a) *“Civil Rights Statutes”*                      The following constitute civil rights statutes that are enforced against Local Education Agencies by The Tennessee Department of Education:
- (a) Title VI of the Civil Rights Act of 1964
- AND
- (b) Title IX of the Education Amendments of 1972
- The Tennessee Department of Education **SHALL NOT** conduct enforcement proceedings and/or full compliance investigations based on an alleged violation of the **AGE DISCRIMINATION ACT OF 1975, TITLE II OF THE AMERICANS WITH DISABILITIES ACT OR §504 OF THE REHABILITATION ACT OF 1973** on behalf of a complainant against an LEA other than a State School as defined below. LEA’s other than State Schools as defined below are solely responsible for implementing the regulations for the above statutes. As such a violation of Title II, §504, or the Age Discrimination Act will be directly enforced by United States Department of Education or the United States Department of Justice.
- b) *“Complaint”*                                      A written or electronic statement alleging a violation of one of the civil rights statutes as defined in this part. A complaint is **NOT**:
- (a) Oral allegations that are not reduced to writing and signed;
- (b) Anonymous correspondence;
- (c) Courtesy copies of correspondence or a complaint filed with others; or
- (d) Inquiries that seek advice or information but do not seek action or intervention from the Department.
- c) *“Complainant”*                                      The party who files the complaint, as defined in this part, shall be the Complainant even if they are not the party whose rights have allegedly been violated.
- d) *“Compliance Review”*                              An evaluation of civil rights policies and implementation by a recipient conducted by the Tennessee Department of Education Office for Civil Rights. Such review may be initiated by a complaint as defined above or by other sufficient notice that discriminatory practices are taking place within an LEA. A non-complaint compliance review will only be initiated where the allegations of intentional discrimination are severe, immediate and highly persuasive based upon submitted interviews, documents,

or other information. Such review will be handled as though a written complaint had in fact been filed which means it will be subjected to the same jurisdictional requirements for complaints as discussed below.

- e) *“Continuing Violation”* An act or series of acts which began on a date one hundred eighty (180) days prior to the filing of the complaint but continue to occur until, on or beyond the date the complaint was filed.
- f) *“Corrective Action Plan”* An agreement entered into by the Recipient and the Tennessee Department of Education Office for Civil Rights, witnessed by the Complainant, after there has been a finding of non-compliance. The agreement should include, but is not limited to, statements by the Recipient acknowledging TOCR found non-compliance, statements affirming Recipient’s intent to put safeguards in place to prevent non-compliance in the future, statements detailing the safeguards and the necessary retroactive activity to rectify the injury suffered by the complainant, and the timeline for both the retroactive corrections as well as the future safeguards to be fully in place. Such timeline must be swift and reasonable as determined by TOCR.
- g) *“Covered Class”* Shall mean those individuals for whom the specified statute was meant to protect from discrimination. Specifically discrimination based on:
1. Race, Color, National Origin (Title VI);
  2. Gender (Title IX);
  3. A party who has a disability as defined in Title II of the ADA.
- h) *“Enforcement Jurisdiction”* Tennessee Department of Education Office for Civil Rights shall have enforcement jurisdiction when:
1. The Complainant has established that the party on whose behalf the complaint has been filed was a covered class;
  2. The Civil Rights statute and/or regulations gives the Tennessee Department of Education Office for Civil Rights the authority to act if a violation occurred; and
  3. The right that has allegedly been violated can be rectified by and through the action of this office
- i) *“Local Education Agency”* The Local Education Agency (LEA) shall be any K-12 school, or school system, located within the State of Tennessee. Use of the term LEA can be used generically or to describe a specific school, or school system. If used to describe a specific school or school system, the full and actual name of such school or school system shall be stated prior to use of the term LEA within the Tennessee Department of Education Office for Civil Rights correspondence. References to LEA’s shall include State Schools, as they are defined below, unless otherwise stated.
- j) *“Recipient”* The LEA who receives Federal or State funds distributed by The Tennessee Department of Education who has been named by the complainant as the institution that has violated the civil rights statutes as defined in this part.
- k) *“Statistical Significance”* Occurs when statistical data reveals an over or under representation of a specific covered class within a program or activity of the LEA and the over or under representation is not congruent and proportional to the population of the covered class at issue within the particular school or school system.

- l) *"State School"* One of the four schools operated and run by the State of Tennessee Department of Education in conjunction with the State Board of Education. The four schools are:
1. Alvin C. York Agricultural Institute
  2. Tennessee School for the Deaf
  3. Tennessee School for the Blind
  4. West Tennessee School for the Deaf
- m) *"TDOE"* Shall mean Tennessee Department of Education.
- n) *"Title VI"* Shall refer to Title VI of the Civil Rights Act of 1964.
- o) *"Title IX"* Shall refer to Title IX of the Education Amendments of 1972.
- p) *"Title II"* Shall refer to Title II of the Americans with Disabilities Act of 1990.
- q) *"TOCR"* Shall mean Tennessee Department of Education Office for Civil Rights.
- r) *"USDOE"* Shall mean United States Department of Education.
- s) *"USOCR"* Shall mean United States Department of Education Office for Civil Rights.

### **Article III: EVALUATION OF COMPLAINT**

#### **Section 301: Preliminary Assessment**

- a) Has a complaint been received?

TOCR will first evaluate whether a party has filed a complaint as defined above. TOCR will review the completed complaint form and any additional documentation offered by the complainant. All will be assessed to determine if there is sufficient information to establish a possible violation of the statute. If the party on whose behalf the complaint has made is a minor, the complainant should seek and receive written permission from the parent or guardian of that minor, so that TOCR may speak with the minor regarding the incidents leading to the filing of the allegations. Copies of such permission should be forwarded to TOCR along with the complaint.

- b) Has the complainant filed the complaint within one hundred eighty (180) days of the most recent discriminatory act?

A complaint must be filed within one hundred eighty (180) days of the most recent discriminatory act, unless the act is deemed a continuing violation as defined in this part. A waiver of timeliness shall be granted case by case, and shall be based only upon a reasonable excuse.

#### **Section 302: Acknowledgement of Complaint**

Upon completion of the preliminary assessment, TOCR shall issue a letter to the complainant and recipient acknowledging receipt of the complaint (*Acknowledgement Letter*). The acknowledgement letter shall state that the complaint is being evaluated by TOCR. The letter shall also state that the complainant and recipient will be notified, in writing, within ten (10) days from the date of the acknowledgement letter whether TOCR will go forward with a full investigation or if the complaint is to be dismissed on jurisdictional grounds.

#### **Section 303: Determine Subject Matter Jurisdiction**

TOCR will determine if the facts stated in the complaint have alleged a violation of one or all of the Civil Rights Statutes, as defined in this part, and whether the party on whose behalf the complaint has been filled falls within the covered class for the particular statute alleged to have been violated.

### **Section 304: Determine Personal Jurisdiction**

TOCR will determine if the complaint has been filed against an LEA who TDOE provides Federal or State Funding. The complaint will be dismissed against an LEA who does not receive Federal or State Funding from TDOE. TOCR does not have personal jurisdiction against a non-recipient LEA.

### **Section 305: Notify the Parties Following Complaint Evaluation**

After the complaint has been fully evaluated by TOCR a letter (*Notification Letter*) shall be issued to both the complainant and recipient stating whether the office will go forward with a full compliance investigation or if the complaint will be dismissed. If the complaint is to be dismissed the notification letter shall include the basis for the dismissal. If an investigation is to be initiated the recipient shall have fifteen days (15) from the date of the notification letter to respond to the complaint. The recipient's response should include any relevant documentation and/or witness information. Further documentation and additional specified responses may be required by TOCR from one or both parties. The notification letter will inform both parties that TOCR will be in separate contact with them to arrange necessary interviews or document evaluation as needed for the efficient investigation of the allegations. Failure of either party to provide necessary documentation, grant necessary interviews, or respond to specified questions, could result in a dismissal for the complainant or a finding of non-compliance by the recipient. Complaints pertaining to students, and information gathered for the investigation, shall be maintained as confidential records protected under the Family Educational Rights and Privacy Act (FERPA). Complaints pertaining to parties other than students may be public records under the Tennessee Public Records Act, T.C.A. §10-7-503. TOCR will not reveal the name or other identifying information about a complaint to anyone other than the recipient or its representatives, unless such information is requested to be disclosed under the Tennessee Public Records Act.

## **Article IV: INVESTIGATION, RESOLUTION, AND ISSUING LETTERS OF FINDING**

### **Section 401: Legal Evaluation**

TOCR conducts a legal evaluation of the facts presented to determine whether or not the law has been violated so as to take the LEA, and/or TDOE, out of compliance. Below are general overviews of the legal analysis conducted by TOCR. The overviews in no way represent the full extent of the legal analysis which is conducted on a case by case basis, but is meant to represent the minimum analysis conducted.

#### **Title VI of the Civil Rights Act of 1964**

Title VI prohibits discrimination based on race, color, or national origin in all programs or activities that receive Federal financial assistance. Title VI only covers purposeful or intentional discrimination. To prove that there has been a violation of Title VI, a complainant must show intent to discriminate or that an action by the accused has had a disproportional or disparate impact on a Title VI covered class. If a complainant attempts to show violation of Title VI based on the impact theory, understand that the impact is compelling evidence of discrimination, but alone, does not prove intent. The disparate impact theory requires a showing of the disproportional impact as well as some other tangible evidence in order to prove intent. If the complainant provides evidence of intentional discrimination or discrimination based on a theory of disparate impact, the accused party must show that the action taken was based on a non-discriminatory educational necessity or an otherwise related legitimate purpose. Discrimination in employment is limitedly covered under Title VI. Title VI covers employment discrimination only if the primary purpose of the federal funds is employment, unless the primary beneficiaries were impacted by the discriminatory employment practices. In the case of an LEA as the employer, the primary beneficiaries of the federal funds would be the students, and the primary purpose of the funds would be education and not employment. Therefore, it would be necessary to show the impact on the students, unless obvious, before this office would be able to enforce Title VI. The authority of this office is to enforce compliance through the LEA's potential loss of federal funding. Remedies such as back pay, reinstatement and/or monetary awards are not available through this office. Agencies that offer these

types of remedies are, the Equal Employment Opportunity Commission, and the Tennessee Human Rights Division in the case of an allegation of employment discrimination.

### **Title IX of the Education Amendments of 1972**

Title IX of the Education Amendments of 1972, 20 U.S.C. §1681, prohibits discrimination based on gender in all programs or activities that receive Federal financial assistance. Title IX also includes same gender harassment as well as student to student harassment. A complainant must show s/he was “subjected to *quid pro quo* (something for something) sexual harassment or a sexually hostile environment, that s/he provided notice of the harassment or environment to an appropriate person who was at minimum an official of the educational entity with authority to take corrective action or put an end to the discrimination, and the [LEA] response to the harassment amounted to deliberate indifference” *Gebser v. Lago Vista Indep. School District*, 524 US 274, 289-91 (1998). Unlike Title VI, Title IX requires the complainant to have notified an “appropriate person” prior to seeking a remedy with an outside agency. What this means is that before you come to this office with your complaint, you must notify someone within the LEA who has the power to end the discrimination. The intent behind this requirement is to prevent charges against an LEA who may be unaware that one of his or her officials is violating the law. Also unlike Title VI, Title IX broadly covers employment discrimination. In fact the law itself prohibits discrimination in employment based on sex within an educational institution. The authority of this office is to enforce compliance through the LEA’s potential loss of federal funding. Remedies such as back pay, reinstatement and/or monetary awards are not available through this office. Agencies that offer these types of remedies are, the Equal Employment Opportunity Commission, and the Tennessee Human Rights Division in the case of an allegation of employment discrimination.

### **§504 of the Rehabilitation Act of 1973**

§504 of the Rehabilitation Act of 1973, 29 U.S.C. §794(a), prohibits discrimination based on disability in all programs or activities receiving Federal financial assistance. The implementing federal regulations for this law use the term handicap interchangeably with disability. The regulations state that the law only applies to *qualified handicapped persons*. *Handicap*, according to 34 C.F.R. §104.3(j), means either having “a physical or mental impairment that substantially limits one or more of the major life activities; a record of such an impairment; or being regarded as having such an impairment”. *Qualified handicapped person* means:

- (1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;
- (2) With respect to public preschool elementary, secondary, or adult educational services, a handicapped person (i) of an age during which non-handicapped persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) to whom a state is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; See 34 C.F.R. §104.3(l)(1-2).

Enforcement of §504 is solely within the jurisdiction of the United States Department of Education Office of Civil Rights (USOCR). The Tennessee Department of Education Office of Civil Rights (TOCR) provides technical support and responds to general questions regarding this law. TOCR will make every attempt to work with the school system and the complaining party to agree on a compromise that is satisfactory to all parties and is in compliance with the law. If we find that it is not possible to reach a compromise, we will forward a complaint form for USOCR to the complaining party so that s/he may have the allegations thoroughly investigated and enforced if necessary. If you are an employee of an LEA other than a State School, and your allegation arises solely under §504, then your claim will be handled in the manner stated above. If a child is the person on whose behalf the complaint has been filed, s/he is the recipient of special education services, and the alleged discrimination is based on §504, your complaint will be forwarded to the Tennessee Department of Education Special Education Division for a compliance investigation. If you are a student or an employee of a State School or an employee of the Tennessee department of Education, a full investigation will be conducted, and a determination will be made as to whether the Department Division or State School violated §504. Once the party has established that they are a “Qualified Handicapped” person, the State School, Department or Division shall be required to submit evidence. Remedies such as back pay, reinstatement and/or monetary awards

are not available through this office. Agencies that offer these types of remedies are, the Equal Employment Opportunity Commission, and the Tennessee Human Rights Division.

### **Age Discrimination Act of 1975**

Enforcement of the Age Discrimination Act, 42 U.S.C. §§6101-6103, is within the jurisdiction of the United States Department of Education Office of Civil Rights (USOCR). It prohibits age discrimination in the provision of services by federally funded programs, not the employment practices of such programs. Additionally, regulations enforcing the Age Discrimination Act do not apply to:

(1) An age distinction contained in that part of a Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body that

- (i) Provides any benefits or assistance to persons based on age;
- (ii) Establishes criteria for participation in age-related terms; or
- (iii) Describes intended beneficiaries or target groups in age-related terms;

or

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program, except any program or activity receiving Federal financial assistance for employment under the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*).

What this means is that if you feel you were discriminated against in employment and that the discrimination was based on your age, your complaint should not be filed with TOCR or with USOCR. Your complaint would be filed with the Equal Employment Opportunity Commission (EEOC) who has jurisdiction to enforce the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §623. TOCR will provide technical support and respond to general questions regarding the Age Discrimination Act, but questions and assistance with the ADEA should be directed to the EEOC. TOCR will look into all claims for which we receive notice, and if necessary, we will report potential violations to USOCR. We will first work with the school system and the complaining party to come to a compromise that is satisfactory to all parties. If we find that no such compromise is possible we will forward a complaint form for USOCR to the complaining party so that s/he may have the allegations thoroughly investigated and enforced if necessary.

### **Title II of the Americans with Disabilities Act of 1990**

Title II of the Americans with Disabilities Act (Title II ADA), 42 U.S.C §12132, prohibits discrimination in the benefits of services, programs, or activities of a public entity. Title II of the ADA is aimed at preventing discrimination in State and locally assisted programs. Education falls under both Title II of the ADA, and §504 of the Rehabilitation Act which prohibits disability discrimination in Federally assisted programs (see above). Enforcement of Title II of the Americans with Disabilities Act is within the jurisdiction of USOCR and TOCR. If a violation of Title II of the ADA is found to exist within any LEA, the Department of Education may withhold their federal funding, report the violation to USOCR for their enforcement, and/or report the violation to the Department of Justice for their enforcement. Ordinarily the LEA is asked to voluntarily correct the discriminatory practice(s). Upon a failure to comply with an established corrective action plan, or a refusal to correct the discriminatory practice, TOCR will seek the more stringent penalties mentioned above. For purposes of this law disability means either having “a physical or mental impairment that substantially limits one or more of the major life activities; a record of such an impairment; or being regarded as having such an impairment”, 28 C.F.R §35.104. Title II of the ADA only applies to qualified individuals with a disability. A qualified individual with a disability is an individual with a disability, as defined above, who with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by [the] public entity”, 28 C.F.R §35.104. This Act applies to complaints of employment discrimination pursuant to the Federal enforcement regulations. However, as with Title VI and Title IX, the obligation of this office is to enforce compliance through the LEA’s potential loss of Federal funding. Remedies such as

back pay, reinstatement and/or monetary awards are not available through this office. Agencies that offer these types of remedies are, the Equal Employment Opportunity Commission, and the Tennessee Human Rights Division.

## **Section 402: Investigation**

### **a) The Complaint Number**

All complaints moving forward to investigation will receive a complaint number (CN). The CN will be a number ranging from 1 to 25. Once an investigation is closed the complaint and investigative materials related to it shall be filed based on the statute, school name, and school system. These complaints and investigative materials shall be deemed CLOSED. This process will allow for the rotation of the CN as well as enabling TOCR to quickly ascertain if a school is potentially violating an established corrective action plan. It will also enable TOCR to be on notice of the need for a system wide compliance review based on a consistent flow of complaints by different complainants against the same Recipient.

### **b) Corrective Action Plan in File**

If it is discovered that the Recipient is currently under the requirements of a previously established corrective action plan, the initial file will be removed from CLOSED materials and be included with the current investigation. Such corrective action plan and other materials may support the Complainant's allegations. If it should be found that another violation of the same civil rights statute has occurred within a five (5) year period, and such violation would constitute non-compliance with the corrective action plan on file, TOCR will initiate administrative proceedings to withhold Federal and State funding until compliance ensues. A second failure to comply with an established corrective action plan within five (5) years of the original corrective action plan will result in the entire file being forwarded to the United States Department of Justice for their review and enforcement.

### **c) Interviews, Document Retrieval, and Specific Responses**

#### **1. Interviews:**

##### **A) Complainant:**

Following the issuance of the CN, the recipient will receive a copy of the complaint including the complaint number. The complainant, and the minor child if applicable, will be called in for an in person interview with TOCR. The recipient and/or their representatives will not be present at this initial interview. We want to encourage the complainant and the minor child if applicable, to speak freely and without the fear of retaliation generally associated with these types of investigations. The complainant should provide TOCR with any relevant documentation and/or witness information during this interview.

##### **B) Recipient:**

Following the private interview with the complainant, TOCR will arrange a meeting between the complainant and the recipient and/or its representatives. This second interview will be for the purpose of allowing the recipient the opportunity to attempt immediate resolution of the complaint if the allegations are not being disputed. If the allegations are being disputed, this second interview with all parties will be for the purpose of the recipient having an opportunity to speak with, or question the complainant, about the allegations if there has been no previous opportunity to do so. If the parties have previously attempted to resolve the allegations prior to the filing of the complaint this secondary interview will not take place unless requested by at least one party and agreed to by both parties.

##### **C) Witnesses:**



Witness interviews will not take place until after TOCR has had an opportunity to review all relevant documentation provided by the complainant and the recipient and/or its representatives during their individual interviews.

The complainant and recipient shall be notified, in writing, when the investigation will be closed at least 10 business days prior to its closure. Any additional documentation or other information that the complainant and/or recipient deem(s) necessary to the resolution of the complaint shall not be accepted after the investigation is officially closed, except as noted in Section 404(B).

#### **Section 403: Investigative Determinations**

After the investigation is closed, a complaint may be resolved in either of the following ways:

- TOCR determines that there is insufficient evidence to support a conclusion of noncompliance; or
- TOCR determines that there is sufficient evidence to support a conclusion of noncompliance and the recipient enters into a resolution agreement.

#### **Section 404: Letter of Findings**

Each party shall receive a letter of findings which shall be referred to as the *Resolution Letter*. The resolution letter shall include:

- (a) a statement of the complaint issues addressed by the letter;
- (b) a statement of TOCR's jurisdiction over the complaint; and
- (c) sufficient explanation of the pertinent legal standard and factual analysis so that those receiving the document can understand how TOCR reached its determination.

The resolution letter will be reviewed and approved by the TOCR Director or persons specifically designated to act on his/her behalf. All resolution letters that make a determination under Title II of the Americans with Disabilities Act will include the following language:

*"The complainant may file a private suit pursuant to section 203 of the Americans with Disabilities Act, whether or not TOCR finds a violation of Title II".*

#### **Section 405: Request for Review**

##### **A) Article III Closures and Insufficient Evidence Determinations**

TOCR is committed to a high quality resolution of every case. Article III *Closure Letters*, as well as insufficient evidence resolution letters, will inform the complainant that any questions or concerns about TOCR's case determination should be raised with the TOCR investigative officer whose name appears in the letter. The complainant will also be informed that if he or she still has concerns after consulting the investigative officer, he or she may send a **written request** for reconsideration to the Office of General Counsel (OGC) within 15 days of the date of the closure letter. Contacting the investigative officer neither tolls the 15-day timeline for filing a request for reconsideration, nor is a prerequisite to file a request for reconsideration with OGC. The complainant should be as specific as possible, focusing on factual or legal concerns that could change the disposition of the case. General dissatisfaction with the decision will not be sufficient. Although a complainant generally is expected to submit a request for reconsideration within 15 days of the date of the closure letter, the TOCR Director may exercise discretion in granting a waiver of the 15-day timeframe where:

1. The complainant was unable to submit the request for reconsideration within the 15-day timeframe because of illness or other incapacitating circumstances and the request was filed within 30 days after the period of illness or incapacitation ended; or
2. Unique circumstances generated by agency action have adversely affected the complainant.

If a complainant files a request for reconsideration with the TOCR Director, the TOCR Director will issue a written decision on the request for reconsideration as promptly as possible. If the complainant raises a concern that the TOCR Director inappropriately declined to waive the 15-day timeframe, and OGC determines that the waiver should have been granted, OGC will return the case to the TOCR Director for reconsideration. The decision of OGC on a waiver constitutes the final agency decision.

#### B) Findings of Discrimination

A review, where findings of discrimination are made, will be granted where the record does not reflect substantial factual support for the legal determination that was made, or where the law has been applied in a manner inconsistent with the interpretations of Federal or State courts. The review will entail an assessment of all documents, audio/video tapes, and other records submitted by both sides. In limited circumstances, and by the reviewer's request, the review may include additional responses or submissions from the complainant and/or the recipient. It may also be necessary to re-interview certain witnesses if the record does not reflect clear responses to the alleged violations of law. The complainant/recipient will be advised to be as specific as possible, focusing on factual or legal questions that could change the disposition of the case, and advised also that OGC will not consider any issues or concerns that were not raised prior to the close of the initial investigation. Additionally, any complaint investigation conducted by TOCR is reviewable by the United States Department of Education Office for Civil Rights.

The decision of OGC on a review constitutes the final agency decision on the case.

#### C) Review by USOCR

Any determination made by this Department with regard to the civil rights statutes as defined above is subject to a review by USOCR. A complainant or an LEA has the right to have such review conducted by USOCR.

### **Section 406: Post-Investigation Resolution Agreement**

#### A) Insufficient Evidence Determination

When TOCR determines that the evidence does not support a conclusion that the recipient failed to comply with applicable regulations, TOCR will inform the parties in writing. The resolution letter to the parties should include a statement of the complaint issues addressed, a statement of TOCR's jurisdiction over the complaint, and sufficient explanation of the pertinent legal standard and factual analysis so that those receiving the document can understand how TOCR reached its determination. The case file should include an index of documents in the file and a key referencing by tab of the evidence relied upon in making the determination. The resolution letter will be reviewed and approved by the legal counsel for TOCR.

#### B) Resolution Agreement

When TOCR determines that the evidence supports a conclusion that the recipient failed to comply with applicable regulations, TOCR will negotiate with the recipient a *Resolution Agreement* (RA) which shall, in addition to the Article V Corrective Action Plan, state the recipient's willingness to correct the inappropriate behavior and its agreement to future compliance. This agreement may be reached before or after completion of an investigation but must be based on evidence of legal non-compliance, rather than unfounded allegations or nonspecific concerns.

##### ***Agreement Reached During an Investigation***

A complaint may be resolved when, in the course of an investigation, the recipient asks to resolve the complaint. Such a resolution agreement will require that the recipient admit in some manner that it has acted as alleged by the complainant or as the investigation thus far has indicated. The admission need not be in writing, however any oral or written admission will be noted in the case file. The provisions of the agreement will be aligned with the complaint or the investigation information and will be

consistent with applicable regulations. The complaint will be considered resolved and the recipient deemed compliant if the recipient enters into an agreement that, fully performed, will remedy the identified violations. A copy of the agreement will be included with the *Resolution Letter*.

#### ***Agreement Reached After Completion of Investigation***

When TOCR concludes that the recipient has violated applicable law, TOCR will contact the recipient, explain the basis for its conclusion, and attempt to negotiate an agreement that resolves the identified areas of noncompliance. The agreement must be consistent with policy and aligned with the identified violation. The complaint will be considered resolved and the recipient deemed compliant if the recipient enters into an agreement that, fully performed, will remedy the identified violations. A copy of the resolution agreement will be included with the resolution letter.

#### **C) Guidelines for Agreements**

Resolution Agreements (RA) will be documented in the case file. RA's must be signed by a person with authority to bind the recipient and be approved by their attorney. The RA shall also be approved by the TOCR Director, or a person specifically designated as acting on his/her behalf. The RA must:

- 1) State the purpose of the investigation;
- 2) State the findings of the investigation;
- 3) State the minimum time for monitoring compliance with the RA;
- 4) State the date for submission of the Corrective Action Plan (discussed below);
- 5) State the general acts or steps the recipient will take to resolve compliance issues, (specificity shall be required in the Corrective Action Plan);
- 6) State the dates for implementing each act or step; and
- 7) Indicate how the terms of the agreement align with the result of the investigation and are consistent with applicable civil rights statutes and regulations. A cross-reference and/or key to the evidence in the case file may be included.

#### **Section 407: Monitor Post-Investigation Resolution Agreement**

TOCR will promptly conduct its monitoring activities consistent with the following standards and procedures.

##### **A) Verification of Recipient's Implementation**

TOCR will obtain sufficient information to determine whether the commitments made by the recipient have been implemented consistent with the terms of the settlement agreement. In many instances verification of remedial actions can be accomplished by careful review of reports, documentation and other information submitted by recipients and knowledgeable persons. In some instances, a site visit may be required to verify actions taken by the recipient or may be deemed the most efficient method of verification. Monitoring site visits will be conducted as necessary to verify or ensure compliance with the agreement.

##### **B) Responding to Monitoring Reports**

TOCR will periodically require the recipient to verify by way of a written report that the recipient continues to be in compliance with the RA. TOCR will acknowledge receipt of monitoring reports promptly. TOCR will evaluate the report, and issue a decision as quickly as possible.

### C) Changed Circumstances Affecting Agreements

#### ***Mootness or Change in Law or Policy***

TOCR may agree to modify or terminate the RA and CAP if it learns that circumstances have arisen that fully resolve, or render moot, some or all of the compliance concerns that were addressed by the resolution agreement (e.g., further remedial action is not required because the student has moved out of the school district or the programs at issue no longer exist). TOCR will also modify the RA and CAP in response to changes in controlling case law, statutes, regulations, or agency policy that makes some or all of the provisions contained in the agreement inconsistent with the changes in controlling case law, statutes, regulations, or agency policy.

#### ***New Compliance Issues***

Compliance issues identified for the first time during monitoring shall, in consultation with TOCR, be addressed by either providing technical assistance or the initiation of a new investigation. In extreme circumstances the RA and CAP may be modified to include the new compliance issues if they are proportional and congruent to the compliance issues being addressed in the current RA.

#### ***Implementation Problems***

TOCR will promptly provide written notice to the recipient of any deficiencies with respect to implementation of terms of the agreement, and will request immediate and appropriate action to address those deficiencies. TOCR shall seek additional commitments where necessary to address the failure of the recipient to implement commitments in the original agreement. Where a recipient notifies TOCR that it will not carry out a provision of the agreement in the agreed-upon time or manner, or when TOCR reaches this determination after three (3) or more requests to comply and a failure to provide a reasonable excuse for the failure to implement that specific provision, TOCR will consider the RA terminated and a final statement of non-compliance shall be issued to the LEA. The final statement of non-compliance will be forwarded, along with the initial complaint and investigative files, to the appropriate authorities to withdraw federal and/or state financial assistance.

### D) Approval of Modifications

Modification of the agreement provisions, reporting provisions, or timetable for completion or reporting will be granted on a case by case basis. Extensions of time of up to 30 days for each report may be granted as authorized by the investigative officer or as approved by the Director for TOCR, or legal counsel for TOCR. Other modifications to the agreement will be reviewed and approved by the legal counsel for TOCR. The Director for TOCR, or legal counsel for TOCR, must approve any modification that would extend the total monitoring period beyond two years from the date of the original agreement. The recipient and the complainant will be notified, in writing, of significant modifications to the agreement.

### E) Conclusion of Monitoring

TOCR will conclude the monitoring of a case when it determines that the recipient has fully implemented the terms of settlement agreement, including any subsequent modifications to the agreement. The recipient and complainant will be promptly notified in writing of this decision. The letter informing the parties that monitoring is concluded will be reviewed and approved by the Director for TOCR, legal counsel for TOCR, or their designees.

## **Section 408: Delay in Investigation**

If for reasons beyond the control of TOCR the investigation goes beyond sixty (60) days, all parties will be notified in writing of such delay. An indication of the anticipated date of closure will also be provided.

## **Article V: INITIATING ENFORCEMENT ACTION**

### **Section 501: Corrective Action Plan**

A Corrective Action Plan (CAP) shall be submitted to TOCR within 10 business days of the signing of the Resolution Agreement or within 30 days of the final investigative determination, whichever is sooner. The CAP shall:

- 1) State the purpose for submission of a Corrective Action Plan;
- 2) State the specific acts or steps the recipient will take to resolve compliance issues;
- 3) State how the Recipient intends to implement the specific acts or steps necessary to resolve the compliance issues;
- 4) State the date on which the CAP will be fully implemented;
- 6) Indicate how the terms of the agreement align with the result of the investigation and are consistent with applicable civil rights statutes and regulations. A cross-reference and/or key to the evidence in the case file may be included.

***The CAP shall not be inconsistent with the Resolution Agreement.***

### **Section 502: Voluntary Corrective Action Plan**

A Voluntary Corrective Action Plan (CAP) should be created by the recipient and approved by TOCR following a finding of non-compliance by TOCR against the recipient. The CAP shall be probationary for a period of one (1) year, and regularly monitored for a period of up to two (2) years following the finding of non-compliance. After the two (2) years has passed the recipient shall be monitored under the same circumstances as any other school system within the District as explained in the Office Policy Manual (OPM).

### **Section 503: Mandatory Corrective Action Plan**

If the recipient refuses to voluntarily create a CAP under section A above, TOCR will create a Mandatory Corrective Action Plan (MCAP) and require immediate implementation. Implementation shall be required to be complete on the date stated in the MCAP. TOCR will allow reasonable but minimum time for implementation upon receipt of the MCAP by the Recipient. TOCR will offer sufficient notice to the recipient prior to implementation of a MCAP.

### **Section 504: Timeliness of Implementation**

While many CAPs could be fully implemented within a short period of time, some agreements will involve more complex terms that require additional time to complete. The general expectation is that CAPs should be implemented not more than one (1) year after issuance of the resolution letter. Extenuating circumstances may allow for the RA to be implemented within at least two (2) years of the resolution letter. The RA may be monitored for up to two (2) years following the issuance of the resolution letter depending on the severity and circumstances of the initial non-compliance. Examples of circumstances that may justify extending the period of implementation to two years may include, an action involving construction of, or major modification to, a recipient's facilities; an action that cannot be completed without action by a legislative body; or action requiring the collection and analysis of data lasting more than one school year. Extenuating circumstances shall be negotiable.

### **Section 505: Failure to Voluntarily Submit Corrective Action Plan**

When TOCR's investigation has resulted in a determination that the recipient has not complied with applicable civil rights statutes and regulations and the recipient declines to enter into an agreement, the TOCR will follow the procedures as stated in Section 503 and 506(C).

#### **Section 506: Notify US Office for Civil Rights, the Department of Justice (DOJ) or EEOC When Required**

##### **A) Title II of the Americans with Disabilities Act and Section 504**

If a Title II complaint was referred to TOCR by the Department of Justice, TOCR will send a copy of the letter resolving the case to DOJ. When a Title II/504 employment discrimination complaint has been dual-filed with EEOC and TOCR and referred to TOCR, TOCR will notify the EEOC once the complaint has been resolved. (For precision please refer to 28 C.F.R Part 37 and 29 C.F.R Part 1640.)

##### **B) Employment Discrimination**

All complainants alleging employment discrimination that are not within the jurisdiction of this office shall be referred, in writing, to the EEOC and/or TN Human Rights Commission for their investigation and review

##### **C) Other notification**

USOCR and DOJ shall be notified in all other instances of a violation where necessary to enforce a resolution agreement, when a recipient fails to agree to voluntary compliance, or when necessary to initiate withdrawal of federal funds.

### **Article VI: COMPLIANCE REVIEWS**

#### **Section 601: Recipients operating under TOCR/USOCR Resolution Agreement and/or CAP**

##### **A) Annual Update of USOCR CAPs for the State of Tennessee**

TOCR shall request from USOCR a yearly list of all recipients who have been required to enter a Resolution Agreement and/or Corrective Action Plan with the US Department of Education.

##### **B) TOCR/USOCR Agreement**

Periodically TOCR may require recipients to send documents or records relating to the recipient's compliance efforts with an established RA and CAP with TOCR or USOCR.

##### **C) On-Site Visits**

Periodically TOCR shall conduct on-site visits to any of the schools within any recipient who is operating under a RA and CAP with TOCR.

#### **Section 602: Recipients NOT operating under TOCR/USOCR Resolution Agreement and/or CAP**

Any recipient may be periodically subjected to a compliance inquiry, or full investigation if necessary, if TOCR receives notification from any source that a recipient is potentially violating the applicable civil rights statutes. Notification may range from a phone call from a concerned citizen to events witnessed by a TDOE employee while conducting an on-site visit. If a recipient is found to be out of compliance with the applicable statute after the inquiry or investigation, TOCR shall issue a letter of findings stating the recipient's non-compliance. At such point the provisions of Article V shall apply to the recipient.